

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2013-1311

GENERAC POWER SYSTEMS, INC.,

Plaintiff-Appellant,

v.

KOHLER COMPANY,

Defendant-Appellee,

and

TOTAL ENERGY SYSTEMS, LLC,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District
of Wisconsin in case no. 11-CV-1120, Judge J.P. Stadtmueller presiding.

**MOTION TO EXTEND TIME FOR FILING BRIEF OF DEFENDANTS-
APPELLEES KOHLER COMPANY AND TOTAL ENERGY SYSTEMS**

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Attorneys for Defendant-Appellee, Kohler Company

Pursuant to Fed. R. App. P. 26(b) and Fed. Cir. R. 26(b), Defendants-Appellees Kohler Company (“Kohler”) and Total Energy Systems, LLC (“TES”) hereby move the Court to extend the time to file their response brief in the above-captioned appeal by 35 days, from the currently-scheduled deadline of November 4, 2013, up to and including December 9, 2013. This is Kohler’s and TES’s second request for an extension of time.

In support of this motion, Kohler and TES state:

1. Kohler’s and TES’s response brief is currently due on November 4, 2013.
2. Pursuant to Fed. Cir. R. 26(b)(1), this motion is timely filed because it is being filed more than seven days before the response brief is due.
3. Kohler has informed Generac of this motion and sought its consent. Generac has indicated that it does not oppose a 35-day extension and does not plan to file a response in opposition to this motion.
4. There is good cause for the Court to grant this motion.
5. The record in this case is voluminous and additional time is needed to review the record to prepare the response brief.
6. In addition to this appeal, the attorneys for Kohler are preparing for a patent trial at the end of this month in another matter, which requires their

attention. The requested extension of time would allow counsel to devote the necessary time to this appeal.

7. A 35-day extension of time should not prejudice Generac.

8. One previous extension of 45-days was sought and granted with respect to the response brief of Kohler and TES.

For the foregoing reasons, Kohler and TES respectfully request that the Court grant this motion to extend the time for filing their response brief by 35 days, from November 4, 2013, up to and including December 9, 2013.

Dated: October 7, 2013

Respectfully submitted,

s/ Jonathan H. Margolies
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FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Generac Power Systems, Inc. v. Kohler Company et al.No. 2013-1311

CERTIFICATE OF INTEREST

Counsel for the ~~(petitioner)~~ ~~(appellant)~~ ~~(respondent)~~ ~~(appellee)~~ ~~(amicus)~~ ~~(name of party)~~Kohler Company certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Kohler Company

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:Jonathan H. Margolies, Katherine W. Schill, Richard H. Marschall, and Melanie J. Reichenberger, all of Michael Best & Friedrich LLPApril 22, 2013

Date

/s/ Jonathan H. Margolies

Signature of counsel

Jonathan H. Margolies

Printed name of counsel

Please Note: All questions must be answered

cc: H. Michael Hartmann

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Generac Power Systems, Inc. v. Kohler Company et al.No. 2013-1311

CERTIFICATE OF INTEREST

Counsel for the ~~(petitioner)~~ ~~(appellant)~~ ~~(respondent)~~ (appellee) ~~(amicus)~~ ~~(name of party)~~Total Energy Systems, Inc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Total Energy Systems, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:George H. Solveson, Aaron T. Olejniczak, and Ryann H. Beck all of Andrus, Scales, Starke & Sawall, LLPApril 22, 2013

Date

/s/ George H. Solveson

Signature of counsel

George H. Solveson

Printed name of counsel

Please Note: All questions must be answered

cc: Eley O. Thompson